FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978

On 25 October President Carter signed into law the Foreign Intelligence Surveillance Act of 1978 (P.L. 95-511), culminating a two-year effort by this Administration, picking up where the Ford Administration left off, to obtain enactment of statutory procedures authorizing the use of electronic surveillance in the United States for foreign intelligence and counterintelligence purposes. The Act was passed by the Senate earlier this year with strong bipartisan support and more recently, after extensive debate, by the House of Representatives. The Intelligence Community participated directly in the development of this legislation within the Executive Branch and in the Congress, and it has had my strong support as well as the support of the Directors of the FBI and NSA, the agencies whose operations are primarily affected. The legislation is a significant step in establishing statutory charters for the Intelligence Community.

The Act is intended to assure the American public that their privacy interests are protected by appropriate statutory safeguards and to rebuild public confidence in the national intelligence collection effort and in the agencies of the Government engaged in that effort. It is also intended to ensure that the Executive Branch is not denied significant foreign intelligence and that intelligence personnel will have the affirmation of Congress by statute that their actions are lawful. The Act places the activities which it covers on a solid and reliable legal footing and hopefully brings an end to the uncertainty about the limits of legitimate authority with respect to such activities. Intelligence personnel who act in accordance with the new statute are insulated from criminal prosecution or civil liability.

The Act covers electronic surveillance for intelligence purposes using the following techniques:

--the acquisition of a wire or radio communication sent to or from the United States by intentionally targeting a known United States person (including a citizen or permanent resident alien) in the United States;

--a wiretap in the United States to intercept, for example, a telephone or telegram communication;

--the acquisition of private radio transmissions where all communicants are in the United States;

--the installation or use in the United States of any electronic, mechanical, or other surveillance device to acquire information other than a wire or radio communication under certain specified circumstances.

Electronic and related surveillance activities which do not fall within these categories, essentially activities conducted abroad, are not covered. The Administration currently is studying proposals for legislation dealing with overseas electronic surveillance, limited however to situations in which such surveillance is directed against U.S. persons.

The Act requires prior judicial authorization for all electronic surveillance for foreign intelligence or counter-intelligence purposes in the United States in which there is a possibility that communications of United States persons might be overheard. In order to approve an application made by an Executive Branch official, a judge must find that there is probable cause to believe that the target of the surveillance is either a "foreign power" or an "agent of a foreign power," and that the facilities at which the surveillance is directed are being used or about to be used by a foreign power or agent of a foreign power. Under the "agent of a foreign power" standard the Government may target a United States person who knowingly engages in sabotage, international terrorism or clandestine intelligence gathering or other intelligence activities for or on behalf of a foreign power, or who aids, abets, or conspires with anyone engaging in such activities. The Government may also target aliens (other than permanent resident aliens) merely on the basis that they are acting as officers or employees of a foreign power, members of group engaged in international terrorism or foreign visitors from countries having demonstrated some pattern or practice of engaging in intelligence activities threatening the security of the United States.

The judge also must find that procedures proposed in an application adequately minimize the acquisition, retention, and dissemination of information concerning U.S. persons consistent with the need of the United States to obtain, produce and disseminate foreign intelligence. Every application for judicial authorization must also contain various certifications by appropriate Executive branch officials and, if the target is a U.S. person, the judge must determine that these certifications are not clearly erroneous.

The judges who review the applications for judicial authorization comprise a court of seven judges publicly designated by the Chief Justice from geographic areas throughout the United States serving by rotation in the District of Columbia. If a judge were to deny an application, the Government would have right of appeal to a special three-judge court of review and ultimately to the Supreme Court.

Prior judicial authorization is not required where electronic surveillance is directed solely at lines or channels of communications used by foreign powers exclusively to communicate among or between themselves and in other circumstances in which it is extremely unlikely that a United States person's communication would be intercepted. Such surveillances may be undertaken upon approval of the Attorney General. In addition, prior judicial authorization is not required for limited periods of time in emergency or wartime situations.

Of special interest to CIA are provisions which specifically permit the acquisition without judicial authorization of electronic communications solely for such essential activities as testing the capability of electronic equipment, training intelligence personnel in the use of electronic surveillance equipment, and conducting electronic "sweeps" to protect information from unauthorized disclosure, under vigorous controls to ensure that no information concerning United States persons is improperly used, retained or disseminated.

Once surveillance is authorized by a court or by the Attorney General, communications common carriers may be directed to "furnish all information, facilities, or technical assistance necessary to accomplish the electronic surveillance" in a secure manner in exchange for appropriate compensation. This provision is very important to the Intelligence Community and the common carriers themselves as it clarifies the legality of essential assistance provided by the carriers.

Special security procedures dealing with court proceedings and records relating to the approval process and common carrier cooperation are to be established and the Act specifically provides that the DCI is to have a consultative or approval role in their development. Security procedures may include such document, physical, personnel, or communications security measures as are necessary to protect information concerning proceedings under the Act from unauthorized disclosure.

Other significant provisions deal with congressional oversight, the use of information obtained or derived from electronic communications in criminal and other legal proceedings, and criminal penalties and civil liability for violations of the statute. The provisions of the Act became effective when it was signed by the President, except as regards certain ongoing operationsfor which a limited readjustment period is permitted.

This notice is intended merely to provide a summary, rather than detailed and comprehensive review, of this highly complex legislation. An understanding of its requirements requires a close reading of the text of the statute and its legislative history. Interested employees, and particularly those employees whose duties may be affected, are encouraged to obtain copies of the Act and consult with the Office of General Counsel with regard to any question regarding the application of this legislation to Agency activities.

STANSFIELD TURNER
Director

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Many people played important roles in securing passage of this bill.

I am convinced that the bill would not have passed without the leadership of Attorney General Bell; the personal commitment of the Director of Central Intelligence, Admiral Turner; and the work of Admiral Inman of the National Security Agency and Directors Webster and Kelley of the FBI. I extend my personal appreciation to these men and their staffs.

My administration's bill was based on some fine work during the Ford administration under the leadership of Attorney General Levi. His contribution to this legislation was substantial, illustrating the bipartisan nature of this process.

There was strong, effective, and bipartisan leadership in the Congress as well. I particularly want to commend Senators Kennedy, Bayh, and Garn for helping to guide this bill to overwhelming approval in the Senate. Chairman Boland and Congressman Morgan Murphy of the House Intelligence Committee and Chairman Rodino and Congressman Kastenmeier of the House Judiciary Committee undertook the hard work of moving the bill through the House. And, once again, I am indebted to the efforts of Speaker O'Neill and Majority Leader Wright.

I wish as well to express my appreciation to the Vice President, who long supported this foreign intelligence reform in the Senate and who assured the wholehearted commitment of the executive branch to this important legislation.

I have said so often, one of the central goals of my administration is to restore the confidence of the American people in their governmental institutions. This act takes us one more step down that road.

NOTE: As enacted, S. 1566 is Public Law 95–511, approved October 25.

Ethics in Government Act of 1978

Remarks on Signing S. 555 Into Law. October 26, 1978

THE PRESIDENT. I'm very pleased this morning to participate in a ceremony that has great significance for our country. During my own campaign for President, I promised the American people that I would do everything in my power to guarantee integrity in the executive branch of Government, and also obviously I have been joined with great enthusiasm by the Members of Congress and members of the judiciary as well.

On May 3 of 1977, shortly after I became President, I proposed legislation to the Congress to meet these commitments. And today I'm pleased to sign into law the Ethics in Government Act of 1978, which gives us added tools to ensure that the Government is open, honest, and is free from conflicts of interest.

I am pleased that no major provision of my own original proposal has been deleted or weakened, and that the Congress, with our support, has actually extended important provisions to the legislative and judicial branches of Government. This is a good indication of cooperation in extending these ethical standards throughout the entire Government of our country.

This bill will provide for mandatory, personal financial disclosures for high officials in the executive branch of Government, for all Members of the Congress, and for all senior members of the judicial branch of Government as well.

The ultimate authority for—or responsibility for endorsing and interpreting the provisions of the act lies in the executive branch of Government. Substantially, it broadens protection against abuses caused by postemployment conflicts of interest, so that people who have been employed in the Government cannot use this employ-